REMARKS

Claims 3-26 are pending. No Claims have been amended. No new matter has been added.

The Non-Final Office Action mailed on October 3, 2007 has been reviewed and carefully considered. The Applicant respectfully requests the Examiner's reconsideration of the rejection of Claims 3-26 in light of the following remarks.

A.   Claim Rejections Under 35 U.S.C. § 103

Claims 3-26 currently stand rejected under 35 U.S.C. 103(a) over United States Patent No. 5,689,652, to Lupien, et al. ("Lupien") in view of United States Patent No. 5,598,351, to Chater, et al, ("Chater").

The Applicant respectfully asserts that Lupien, taken singly, or in combination with Chater, fails to anticipate, or even render obvious, all of the elements of Claims 3-26.

Referring specifically to independent Claim 3, the Applicant respectfully asserts that Claim 3 includes the method step of "administering to a first set of users a first test via the Internet where said first test includes presenting a set of at least two visual images to said first user and receiving said first user's preferences based on said visual images," and that Lupien and Chater fail to render at least this element obvious.

The Examiner cited Lupien as teaching the administration of a first test comprising at least two visual images. (See Office Action dated October 3, 2007, page 2). In particular, the Examiner referenced Lupien at column 5, lines 36-45 and FIG. 4,

2

elements 40-46 and 50-59. However, the cited passages and diagrams of Lupien merely teach a "trader terminal," (Lupien, col. 5, line 36) with a graphical user interface. Lupien makes no mention of "administering a...first test includ[ing] presenting a set of at least two visual images to said first user" or "receiving said first user's preferences based on said visual images." Additionally, the visual elements of FIG. 4 cited by the Examiner are merely buttons and/or text elements of the trader terminal. Lupien makes no suggestion that such visual elements could possibly be used as a test of a user's visual preferences.

Lupien is primarily directed to deriving a satisfaction profile for a security trader based on the trader's willingness to trade securities at a certain price and volume (see Lupien, col. 5, lines 45-65). Under Lupien, the user indicates the price and quantities at which the user is willing to purchase securities.

Lupien specifically teaches that "each trader terminal includes one or more input/output devices that allow the entry of satisfactory density profiles..." (see col. 5, lines 36-45). The satisfaction profile is based on entered prices and quantities, (See, Lupien col. 5, line 65-col. 6, line 5) instead of a test based on two or more images, as in Claim 3. The test recited by Claim 3 provides a metric for determining <u>visual</u> preferences. In contrast, Lupien provides a scale for determining a numeric, non-visual securities trading preferences. Lupien fails to disclose, or even suggest, any kind of test. More specifically, Lupien fails to teach, or even remotely suggest, a test with "a set of at least two visual images" as recited in Claim 3.

The Examiner acknowledges that "Lupien fails to explicitly disclose presenting a set of at least two visual images or video to the first user and receiving the first user's

preferences based on the image or video." (See, Office Action Dated October 3, 2007, page 3). The Examiner asserts that Chater "discloses providing visual images/video images to the user in an on-line dating communications system." (See, Office Action Dated October 3, 2007, page 3). The Applicant respectfully asserts that the Examiner's reliance on Chater to teach the shortcomings of Lupien is misplaced. Chater is directed to showing users a video or still picture of a potential dating partner. Chater does <u>not</u> disclose, or even suggest, presenting video or still images to a user <u>as a test of user visual preferences</u>.

Furthermore, since Lupien fails to disclose "receiving the first user's preference based on the visual image or video," as stated by the Examiner, Lupien cannot render obvious the Claim 3 step of "generating a profile of said first user according to the visual preference of said first user." Without gathering the visual preference of the first user by "receiving the first user's preference based on the visual image or video," Lupien has no "visual preference of said first user" useful for "generating a profile of said first user according to the visual preference of said first user." Therefore, it would be impossible for the system taught by Lupien to base a user profile on visual preferences.

Likewise, Chater fails to disclose the generation of any sort of user profile based on visual preferences. Instead, Chater merely discloses showing a user video of visual images. Chater makes no mention of generating a user profile based on visual preferences.

Therefore, when taken singly, or in combination, Lupien and Chater fail to anticipate, render obvious, or remotely suggest all of the elements of Claim 3.

4

Independent Claims 11 and 19 have elements analogous to those discussed above for independent Claim 3, and are, therefore, patentable over the combination of Lupien and Chater for at least the same reasons as Claim 3.
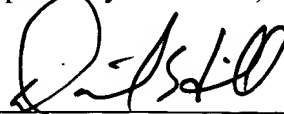
Claims 4-10 depend from independent Claim 3, Claims 12-18 depend from independent claim 11, and Claims 20-26 depend from independent claim 19. By virtue of their dependencies, claims 4-10, 12-18 and 20-26 have the same elements and limitations as claims 3, 11 and 19 respectively. Claims 4-10, 12-18 and 20-26 are, therefore, patentable over Lupien and Chater for at least the same reasons as the independent claims from which they depend.

CONCLUSION

In view of the foregoing, Applicant respectfully submits that the present invention as claimed in Claims 3-26 represents a patentable contribution to the art and the application is in condition for allowance. Early and favorable action is accordingly solicited.

Respectfully submitted,

Dated: March 3, 2008

David M. Hill
Reg. No. 46,170
WARD & OLIVO
380 Madison Avenue
New York, New York 10017
(212) 697-6262

5